PARKING SPACE LEASE AGREEMENT

This Parking Space Lease Agreement (this "***Agreement***") is made and entered into as of [_____], 2019, (the "***Effective Date***") by and between **Francis EVC, LLC**, an Oklahoma Limited Liability Company ("***Lessee***"), and The City of Broken Arrow, an Oklahoma Municipal Corporation ("***Lessor***").

RECITALS

WHEREAS, Lessee is in the business of installation and operation of electric vehicle charging stations ("***Charging Stations***") to deliver electricity to electric vehicles; and

WHEREAS, Lessor desires for Lessee to place up to [_____**4**_____] Charging Station(s) per each property located at:

1. 400 S Ash Ave, Broken Arrow, OK as depicted in Exhibit A
2. 215 S 1st Street, Broken Arrow, OK, as depicted in Exhibit A
3. 307 S 1st Street, Broken Arrow, OK, as depicted in Exhibit A

(each individually, the "***Premises***"); and

WHEREAS, Lessee desires to place up to [_____**4**_____] Charging Station(s) on each of the Premises; and

WHEREAS, Lessor and Lessee enter into this Agreement to provide for (a) the lease by Lessee from Lessor of that certain portion of the Premises depicted on Exhibit A through Exhibit B (the "***Leased Premises***") and (b) certain other agreements between Lessor and Lessee;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Lease of Leased Premises**. Lessor hereby leases to Lessee the Leased Premises, parking spaces and approximately **250** square feet of space (as depicted in Exhibit A through Exhibit B) immediately in front of such parking spaces in order for Lessor to construct and operate Charging Station(s) to the extent necessary to provide electric vehicle charging services. During the Term, Lessee shall have full possession and control of the Leased Premises.

2. **Rent; Payment**. As payment for the lease of the Leased Premises, Lessee shall pay Lessor $[_____10.00____] per year per location (the "***Rent***") during the Term. The Rent shall be payable annually, with the first payment to be made by Lessee prior to commencing of

construction of the Charging Station(s), and each annual payment thereafter due on or before the anniversary of the Effective Date.

3. **Possession**. The first date when Lessee may enter the Leased Premises and begin construction (as set forth in Section 4), and thereafter the operation, of the Charging Stations is [__July 01__], 2019.

4. **Construction on the Leased Premises**. Upon delivery of possession of the Leased Premises to Lessee, Lessee shall, at its sole cost and expense, construct improvements and install trade fixtures as described in Exhibit B.

5. **Utilities.** Lessee agrees to arrange and pay the charges for all necessary Lessee related utility services provided or used in or at the Leased Premises during the Term for Level 3 DCFC Charging Stations. Lessee shall pay directly to the utility company the cost of installation of any and all such Lessee related utility services and shall arrange to have the utility service metered separately. Lessor shall authorize and cause Lessee's chosen utility service providers to supply utilities to the Leased Premises for Lessee's operation of the Charging Stations, all at Lessee's sole cost and expense.

6. **Term**. The initial term of the Agreement shall expire [__15__] years from the Effective Date (the "***Initial Term***"). Lessee shall have the right to extend the Agreement, subject to Lessor's approval, for an additional period of [__5____] years, upon written agreement (the "***Renewal Term***" and together with the Initial Term, the "***Term***"). Following the Renewal Term, any further renewals will be subject to mutual agreement between Lessor and Lessee. In the event of a sale or transfer of the Premises or Leased Premises by Lessor while the Agreement is in effect, this Agreement, including Lessor's obligations and duties hereunder, shall be conveyed with the Premises or Leased Premises.

7. **Use.** Lessee shall use and occupy the Leased Premises during the Term for operation of the Charging Stations and incidental purposes, including, without limitation, operating an energy storage system. All use of the Leased Premises by Lessee shall comply with applicable codes, laws, and ordinances.

8. **Operation of Charging Stations**. Lessor shall have no right to any revenues or payments relating to the operation of the Charging Stations installed at the Leased Premises, either from Lessee or from any third-party.

9. **Maintenance**. Lessee shall be responsible for maintaining the Charging Stations and Lessor shall not have any liability for damage to the Charging Stations unless such damage is caused by Lessor's gross negligence or willful misconduct. Notwithstanding the foregoing, Lessor's normal responsibility to maintain and secure the common areas of the Premises shall also apply to the Leased Premises, such as debris and garbage collection and removal and snow removal. Lessor agrees to inform Lessee of any parking lot maintenance and shall make all reasonable efforts to ensure that the Charging Stations remain available as is reasonably feasible.

10. **Lessor Covenants.** Lessor represents that it is the owner of the Premises, or is otherwise authorized to enter into this Agreement if not the owner, and that this Agreement does not violate any agreement, lease or other agreement of Lessor. Lessor agrees to notify Lessee

within a commercially reasonable time if (a) it has knowledge of third-parties impairing or misusing the Leased Premises or Charging Stations, or (b) it obtains knowledge of a needed repair to the Leased Premises or Charging Stations. If motorists who do not utilize the Charging Stations repeatedly park in the parking spaces in the Leased Premises, thereby impairing use of the Charging Stations, then the parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt.

11. **Alterations**. Except for the construction and maintenance of the Charging Stations, Lessee shall not make any alterations, changes in or additions to the Leased Premises without the prior written consent of the Lessor, which such consent shall not be unreasonable withheld.

12. **Signage**. Lessee and Lessor shall mutually agree to install signage at the Leased Premises to identify the Charging Stations. Upon request by Lessee, Lessor shall, subject to Lessor's reasonable approval and subject to applicable zoning and signage requirements and other such restrictions, allow at least two (2) signs to be placed on the Premises (outside of the Leased Premises) noting the location of the Leased Premises and the Charging Stations and/or providing directions thereto. The location of any such signs on the Premises shall be agreed upon by Lessor and Lessee in good faith.

13. **Assignment**. Notwithstanding Section 6 of this Agreement, Lessor shall not assign this Agreement without the prior written consent of Lessee.

14. **Default**. After material breach by either party to this Agreement, the other non-breaching party can terminate this Agreement on 10 days' written notice if such breaching party has not cured such default within 30 days after first notice of such breach by the non-defaulting party. Neither party shall be liable for, and each party hereto expressly releases the other party from, indirect, consequential, special, or punitive damages, including, without limitation, lost sales or profits damages.

15. **No Indemnification**. Lessee agrees to immediately upon execution of this agreement provide City of Broken Arrow with valid Certificate of Insurance for the above policies. The Certificates of Insurance shall be endorsed with City of Broken Arrow as an additional insured. Each party agrees to be responsible for its own wrongful or negligent acts or omissions or those of its officers, agents, or employees arising in any way out of this Agreement to the extent permitted by law, and for all costs of its own defense of any third-party allegations or claims of such actions or omissions.

16. **Insurance**. Lessor shall carry commercial general liability insurance with limits of not less than One Million Dollars ($1,000,000) for bodily injury or death and property damage and an umbrella insurance policy of not less than Five Million Dollars ($5,000,000). A certificate evidencing such insurance shall be delivered to the Lessor.

17. **Confidentiality**. Neither Lessor or Lessee will disclose the terms of this Agreement to others that are not parties to this Agreement (except for such party's accountants, attorneys or other consultants) or use the other party's name or trademark without the other party's prior written consent, except as required by law

18. **Environmental Matters**. To the best of Lessor's knowledge, Lessor believes that the Leased Premises shall be delivered free of environmental contamination. Lessee shall have no liability for any environmental contamination unless caused by Lessee, its agents, employees or contractors. During the Term, Lessor is responsible for remediating any pre-existing contamination or any contamination not caused by Lessee, its agents, contractors or employees.

19. **[Not Used]**

20. **Notices**. All notices or advices required or permitted to be given by or pursuant to this Agreement, shall be given in writing in the English language. All such notices and advices shall be: (a) delivered personally, (b) delivered by email to the appropriate email address set forth below provided receipt is acknowledged by the addressee by email originated by the addressee or other written means, (c) delivered by email to the appropriate mail address set forth below with a follow-up copy by overnight courier service the next business day at the location of the addressee, (d) delivered by facsimile, € delivered by U.S. Registered or Certified Mail, Return Receipt Requested mail, or (f) delivered for overnight delivery by a nationally recognized overnight courier service. Such notices and advices shall be deemed to have been given (x) the first business day following the date of delivery if delivered personally, by facsimile, or by email, (y) on the third business day following the date of mailing if mailed by U.S. Registered or Certified Mail, Return Receipt Requested, or (z) on the date of receipt if delivered for overnight delivery by a nationally recognized overnight courier service. All such notices and advices and, unless otherwise specifically provided herein for the exchange of particular information, all other communications related to this Agreement shall be given as follows:

If to Lessor: _____

_____

Attn: _____

Email: _____

If to Lessee: Francis EVC, LLC
1924 E 6th St
Tulsa, OK 74104

21. **Entire Agreement.** This Agreement is the entire agreement of the parties hereto respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.

22. **Mutuality.** This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the parties hereto. This Agreement shall not be interpreted strictly for or against any party hereto, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

23. **Additional Representations of each Party.** Each party hereto has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon her, his or its own knowledge and investigation. No party hereto has relied upon any representation or warranty of any other party hereto except any such representations or

warranties as are expressly set forth herein. Each of the persons signing below on behalf of a party hereto represents and warrants that he or she has full requisite power and authority to execute and deliver this Agreement on behalf of the party for whom he or she is signing and to bind such party to the terms and conditions of this Agreement.

24. **Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule of law (whether of the State of Oklahoma or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Oklahoma.

25. **No Partnership**. Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize any party hereto to act as agent for or representative of any other party hereto. Each party hereto shall be deemed an independent contractor and no party hereto shall act as, or hold itself out as acting as, agent for any other party hereto.

26. **Reformation.** In the event any provision of this Agreement, or the application of such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent for any reason, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected and shall continue to be enforceable to the fullest extent permitted by law.

27. **Waiver**. A party to this Agreement may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a Party hereto to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.

28. **Amendment**. This Agreement may be amended or modified only in writing which been signed by the parties hereto and which specifically references this Agreement.

29. **Attorneys' Fees**. In any action brought by a party hereto to enforce the obligations of any other Party hereto, the prevailing Party shall be entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).

30. **Right of First Refusal**. For the duration of the Term, Lessee shall be entitled to a right of first refusal and notice of any third-party offer received by Lessor for installation of Charging Services at the Premises, and Lessee shall have no less than five (5) business days to make an offer to Lessor on the same or substantially the same commercial terms as made by any third-party. If Lessee exercises such right, and if Lessor accepts any offers for additional Charging Stations at the Premises, Lessor shall accept Lessee's offer, to the exclusion of any third-party offer(s).

31. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement shall become effective only when all of the parties hereto shall have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile or digitized transmission of a counterpart signature page hereof.

32. **Marketing.** Lessee hereby agrees that Lessor shall be entitled to the equivalent of 10% of the usable advertising space on the Charging Station video screens for the purposes of promoting Lessor programs, services, events, or otherwise (the "Lessor Advertising"), should Lessee use the Charging Stations for advertising purposes. Such Lessor Advertising content shall be subject to Lessee's reasonable approval.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

LESSEE:

Francis EVC, LLC

By: _____

Name: Clark Wheeler

Title: Senior Manager

LESSOR:

_____

By: _____

Name:

Title: _____

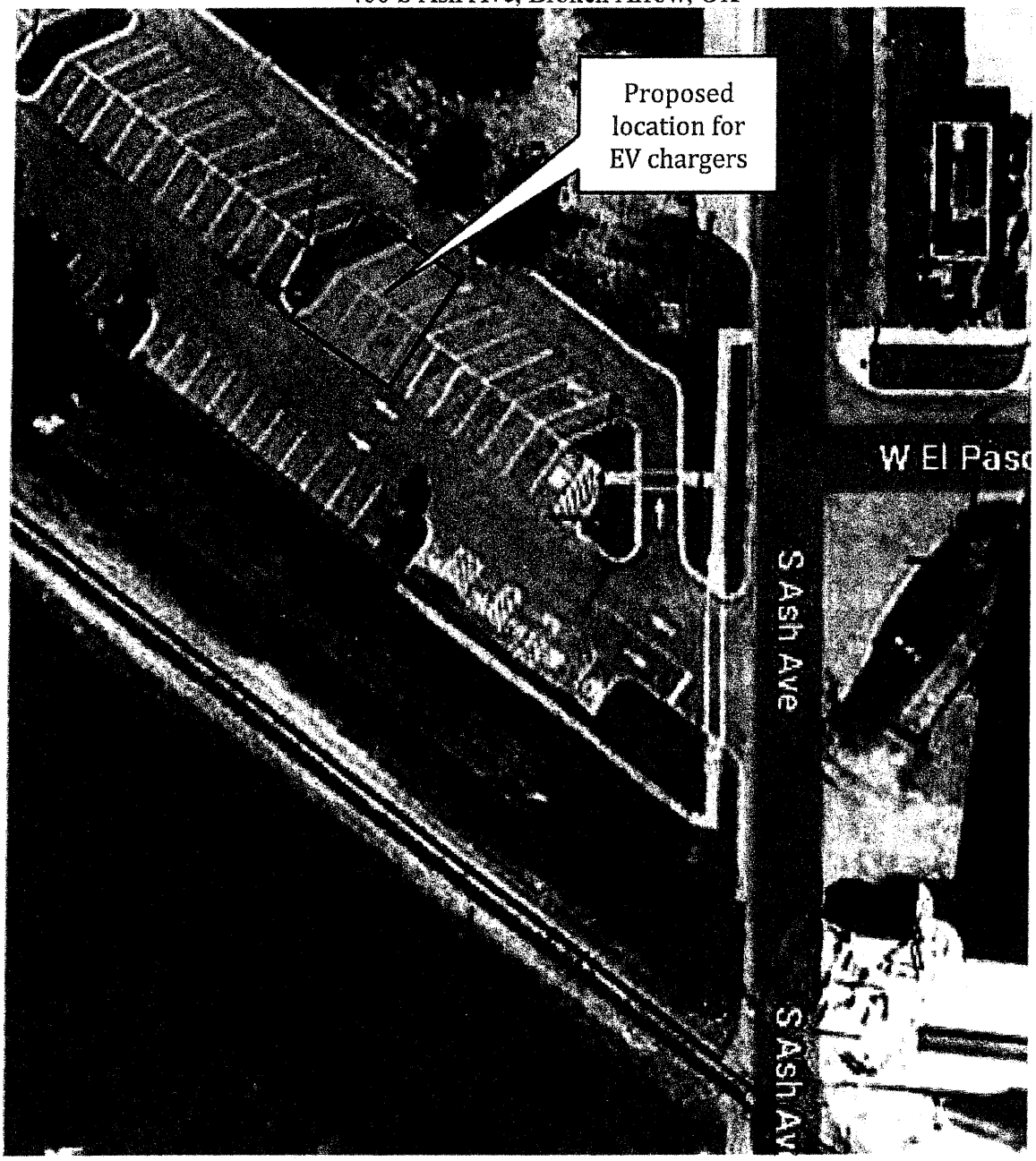
APPROVED AS TO FORM:

_____

Deputy City Attorney

Exhibit A
Leased Premises

400 S Ash Ave, Broken Arrow, OK



EXHIBIT
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Leased Premises
215 S 1st Street, Broken Arrow, OK

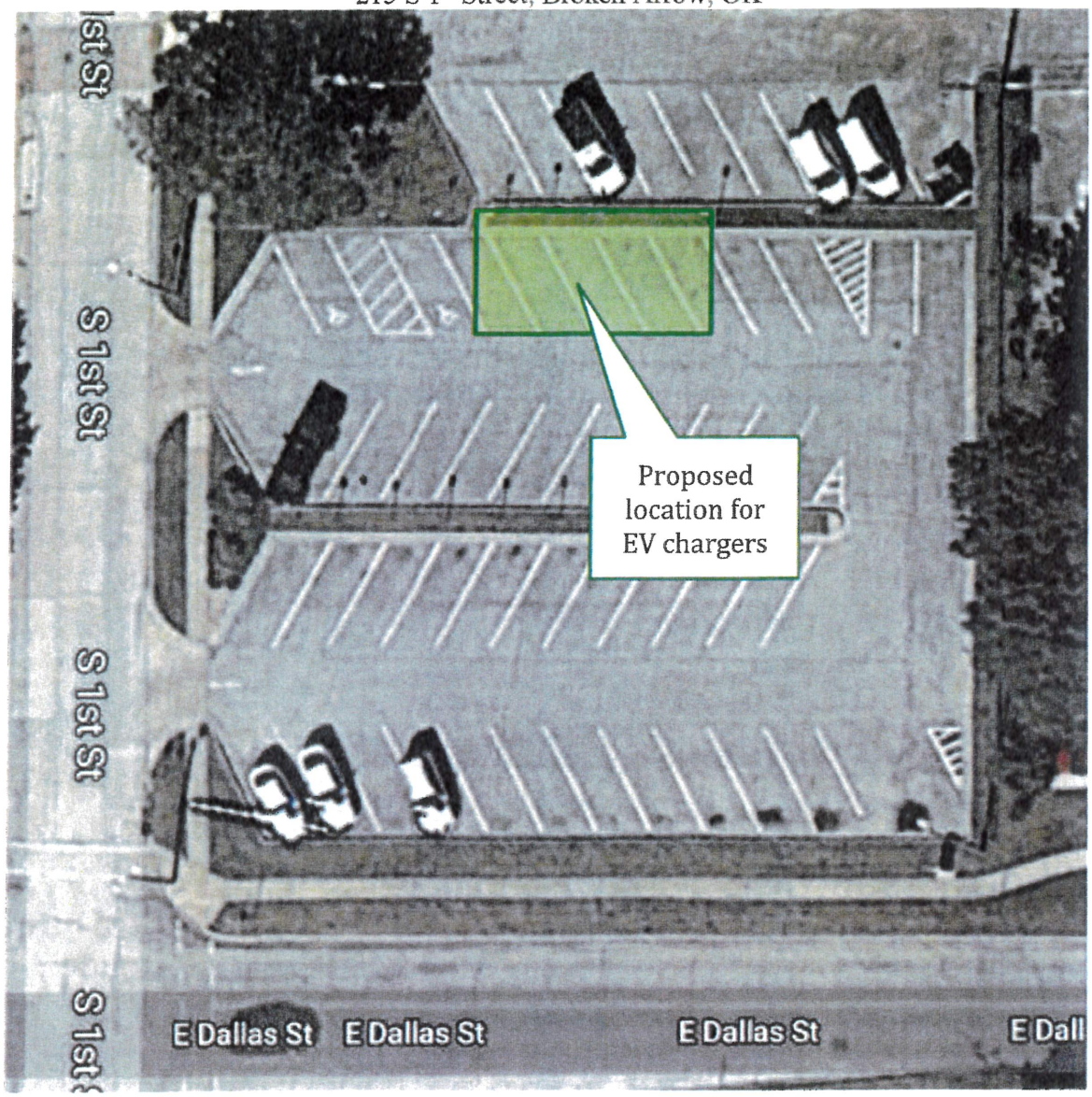

Exhibit A

EXHIBIT
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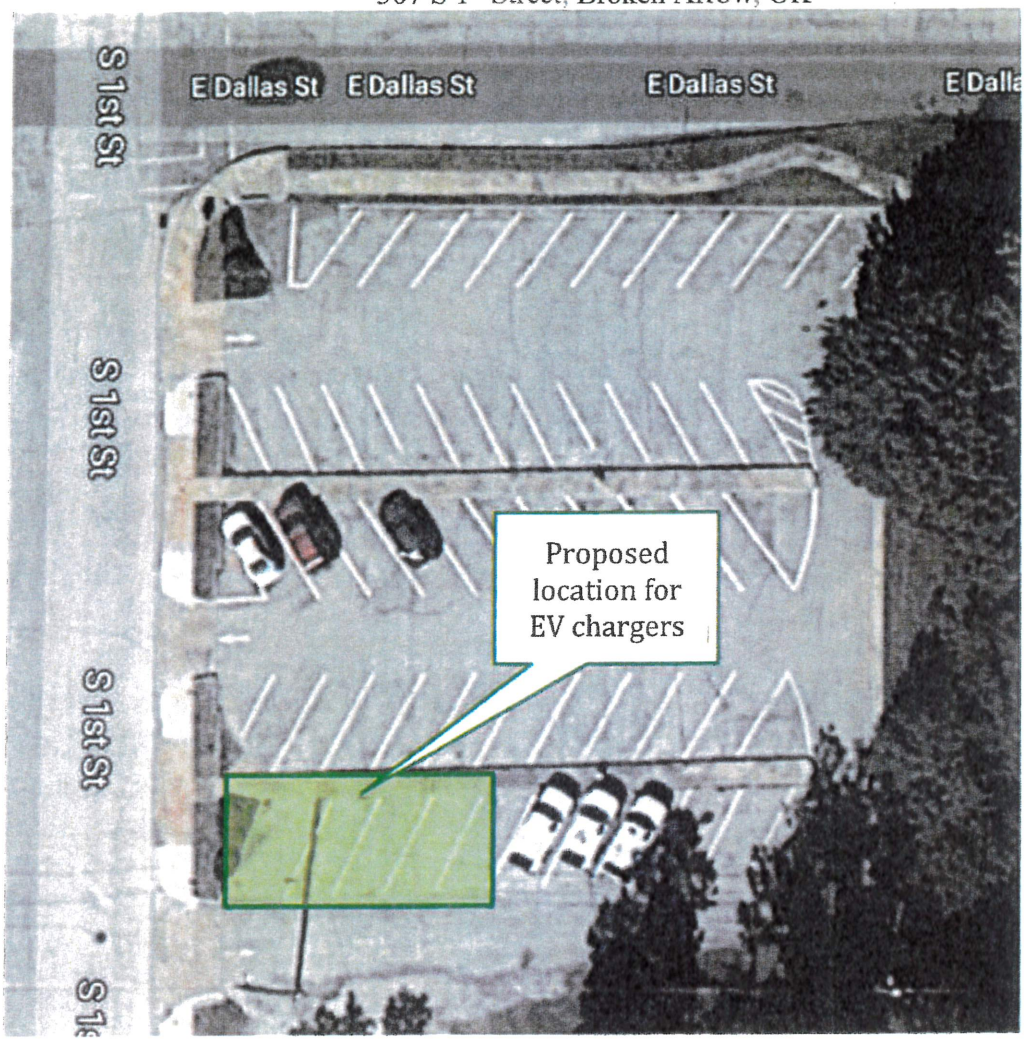
Leased Premises
307 S 1st Street, Broken Arrow, OK



EXHIBIT
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Exhibit B

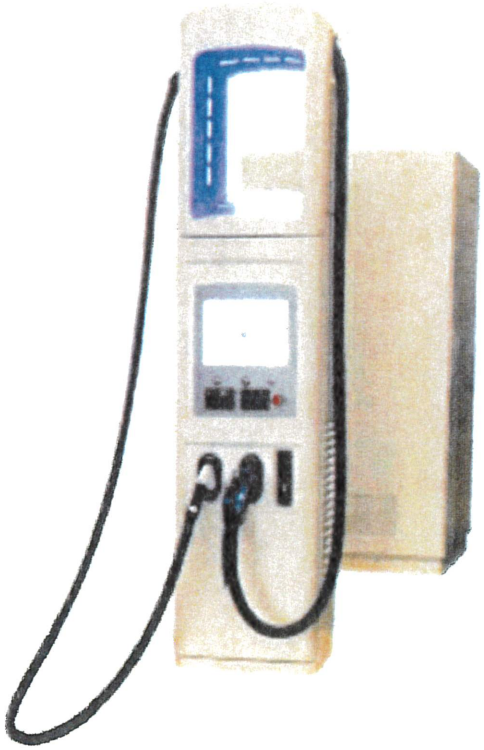
Construction Specifics

Typical Charging Equipment

Charging Capacity	50kW-350KW
Charge Rate	3 to 20+ Miles Per Minute and Above
Charging Plug	CHAdeMO & CCS
Charging Cable	Air Cooled/Liquid Cooled
Display	15" Full Color

Payments Via
Mobile App "Wallet"
RFID
Code Entry
SMS Text

Remote Monitoring & Controls
View Charger Usage
24/7 Monitoring
Automatic Notifications
Remote Troubleshooting
Territory-Wide Push Updates



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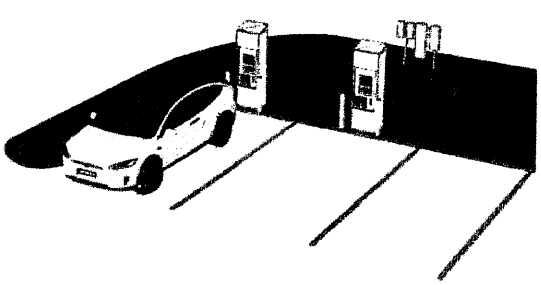
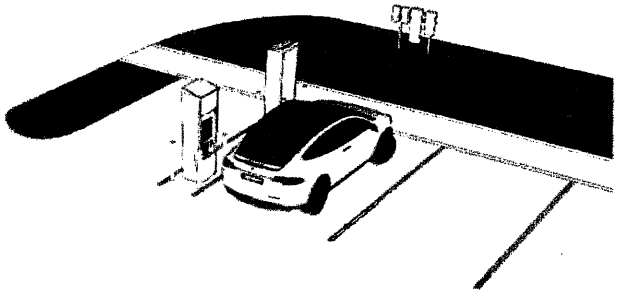
Construction Specifics

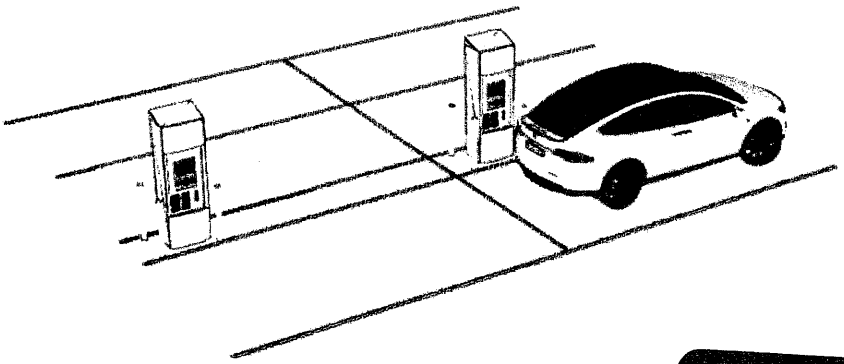
Example Layouts

Example Single Row Parking





Example Parallel Row Parking



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